

1 Tara J. Schleicher, OSB #954021  
TSchleicher@fwqlaw.com  
2 Margot D. Lutzenhiser, OSB #075982  
MLutzenhiser@fwqlaw.com  
3 Farleigh Wada Witt  
121 SW Morrison Street, Suite 600  
4 Portland, Oregon 97204-3136  
Telephone: (503) 228-6044

5 Attorneys for Pacific Cargo Services, LLC, Debtor  
6  
7

8 IN THE UNITED STATES BANKRUPTCY COURT  
9 FOR THE DISTRICT OF OREGON

10 In re Case No. 13-30439-tmb11

11 Pacific Cargo Services, LLC,

12 Debtor.

13 DEBTOR'S MOTION FOR AUTHORITY TO  
SELL ASSETS FREE AND CLEAR OF  
LIENS, CLAIMS AND ENCUMBRANCES  
OUTSIDE THE ORDINARY COURSE OF  
BUSINESS

15 Debtor Pacific Cargo Services, LLC ("PCS" or "Debtor"), by and through its  
16 undersigned counsel, hereby submits this Motion for Authority to Sell Property Free and Clear of  
17 Liens, Claims and Encumbrances Outside the Ordinary Course of Business ("the Sale Motion").

18 In support of the Sale Motion the Debtor states as follows:

19 **Jurisdiction and Venue**

20 1. This Court has jurisdiction of the subject matter herein and the parties  
21 hereto pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. §§ 361, 363, 365, 1107 and related  
22 statutes and rules. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) & (N).

23 **History and Background**

24 2. On January 28, 2013, a voluntary petition for relief under Chapter 11 of  
25 Title 11, the United States Code (the "Bankruptcy Code") was filed by the Debtor.

26 ///

1                   3. The Debtor remains in possession of its assets as a debtor-in-possession  
2 pursuant to sections 1107(a) & 1108 of the Bankruptcy Code.

3                  4.        The Debtor is an expedited delivery company that provides same day  
4        courier and logistics services for companies throughout Washington, Oregon, Idaho, Northern  
5        California, Utah and Montana.

## **Sales Process & Bids**

7               5. On June 25, 2013, this Court entered an order (1) Authorizing and  
8 Scheduling Auction, (2) Approving Sale Procedures and Procedures for Assumption and  
9 Assignment of Executory Contracts/Leases, (3) Approving Form and Method of Notice of  
10 Bidding Procedures and Sale, and (4) Granting Related Relief (the “Sales Procedures Order”)  
11 (Docket No. 338). Among other things, that order approved Sales Procedures and authorized the  
12 Debtor to move forward with an Auction on July 23, 2013 (the “Auction”). See Sales Procedures  
13 Order, Ex. 1 (specifically outlining the approved sales and auction procedures). The Debtor’s  
14 sales process is being run by broker, Equity Partners (“EP”).

15                 6.         As contemplated in the Sales Procedures Order, the Debtor has chosen a  
16         stalking horse bid (the “Stalking Horse Bid”) to notice in anticipation of the Auction. Debtor has  
17         received several additional bids for its assets. Based on the other bids EP has received, the  
18         Debtor and EP expect competitive bidding for the Debtor’s assets at the Auction to result in at  
19         least one overbid.

20                   7. More specifically, the Debtor has received a bid for approximately double  
21 the proposed purchase price in the Stalking Horse Bid. However, a sales deposit has not been  
22 timely received by that bidder, so its offer is not a “Qualified Bid” per the terms of the approved  
23 Sales Procedures at this point.

## **Summary of Proposed Sale and Sale Costs**

25                   8. The proposed purchaser is Pacific Cargo Single Purpose Acquisition  
26 Company (“PCSPAC” or “Purchaser”), an entity to be formed by Cardinal Courier. PCSPAC

1 proposes to purchase a subset of the Debtor's assets (the "Assets") and continue the operations of  
 2 its business. PCSPAC anticipates retaining PCS's employees in order to continue operations.

3                 9.         The proposed purchase is fully described in the Asset Purchase Agreement  
 4 ("APA") attached here to as Exhibit A. As set out in the APA, the Debtor proposes to sell the  
 5 following Assets for a total sales price of \$521,000:

- 6                     (1)      Equipment, and machinery (excluding trucks) ("Lot 1") for \$1,000;
- 7                     (2)      Owned vehicles for \$250,000 ("Lot 2") (a breakdown by secured  
                            creditor is attached to the APA);
- 9                     (3)      Accounts receivables ("Lot 3") for \$250,000;
- 10                  (4)      Customer list, trade names, websites, phone numbers and other  
                            intellectual property ("Lot 4") for \$10,000;
- 12                  (5)      Assumption and assignment of leased trucks, subject to lessor  
                            approval, but without payment of any cure amount due;
- 14                  (6)      Assumption and assignment of leased scanners, subject to lessor  
                            approval, but without payment of any cure amount due or,  
                            alternatively, a cash purchase of scanners for \$10,000.

17                 10.      Known secured claims relating to the Assets of the Debtor and a

18 description of the collateral are as follows:

19                  a.	Graystone Capital ("Graystone") [blanket security interest]	\$2,216,683.45 <sup>1</sup>
20                  b.	Ally Bank [vehicles]	\$204,391.00
21                  c.	AT&T Capital Services, Inc. [scanners]	\$8,725.67
22                  d.	Cutting Edge Federal Credit Union [vehicle]	\$10,569.97
23                  e.	De Lage Landen [forklift]	\$1,319.64
24                  f.	Dell Financial Services [computer equipment]	\$7,927.67

25                 

---

<sup>1</sup> The amounts owed to Graystone and Les Schwab are disputed.  
 26

1	h.	Ford Motor Credit Company [vehicles]	\$380,920.00
2	i.	GE Capital [vehicles]	\$910,251.21
3	j.	MSA Systems, Inc. [scanners]	\$18,477.95
4	m.	PACCAR Financial [vehicles]	\$1,089,175.00
5	n.	Pacific Office Automation [copiers]	\$3,264.40
6	o.	Les Schwab [tires & vehicle parts]	\$20,292.24 <sup>1</sup>

7                 11.       As provided in the Bid Procedures, secured creditors (with liens on the  
8 Assets) may credit bid their secured claim at the Auction.

9                 12.       PCSPAC has submitted a good faith deposit, which is being held by EP  
10 pursuant to the court approved Bid Procedures.

11                 13.       A prompt sale of the Assets to PCSPAC or the winning bidder at the  
12 Auction will enable the Debtor to realize the maximum value for the Assets.

13                 14.       Pursuant to the APA, PCSPAC is purchasing the Assets of the Debtor free  
14 and clear of liens, claims and encumbrances, and shall not assume any successor liability or other  
15 liability, but is proposing to assume the Debtor's vehicle and scanner leases, subject to lessor  
16 approval. In the alternative, PCSPAC has proposed an outright cash purchase of the Debtor's  
17 scanners. Additionally, PCSPAC anticipates negotiating new lease agreements with the Debtor's  
18 landlords for continued occupancy.

19                 15.       The APA was a negotiated, arms-length transaction in which the  
20 Purchaser has acted in good faith, without collusion or fraud of any kind. The Purchaser is not  
21 an "insider" or "affiliate" of the Debtor as those terms are identified in the Bankruptcy Code.  
22 Neither the Debtor nor the Purchaser has engaged in any conduct that would prevent the  
23 application of section 363(m) of the Bankruptcy Code or cause the application of section 363(n)  
24 of the Bankruptcy Code with respect to the consummation of the transaction contemplated by the  
25 Sale Motion.

26       ///

1           16. PCSPAC has not entered into any agreements of any kind with insiders or  
 2 management, including agreements regarding compensation or future employment. However, as  
 3 previously stated, it is anticipated that PCSPAC will employ all or substantially all of the  
 4 Debtor's employees including management.

5           17. The Debtor requests the Court find that the Purchaser is purchasing the  
 6 Assets in good faith within the meaning of section 363(m) of the Bankruptcy Code and is entitled  
 7 to the protections of section 363(m) and 363(n) of the Bankruptcy Code.

8           18. The proposed sale would require payment of a broker fee to EP in the  
 9 amount of 7% of the total purchase price. As such, the cost of the broker fee for the proposed  
 10 sale is \$36,470.

11           19. The Debtor believes that, in the event the Sale Motion is approved, the  
 12 result will be a successful sale of the Assets. The Debtor asserts that PCSPAC will be a capable,  
 13 competent buyer, will give value for the Debtor's assets and will therefore be a good faith  
 14 purchaser. The Debtor believes that PCSPAC will satisfy the provisions of the Bankruptcy Code  
 15 and case authority.

16           20. Notice of the sale shall be sent to all creditors and interested parties. A  
 17 shortened notice period was approved in Sales Procedures Order.

#### Argument and Authorities

19           21. After notice and a hearing, a Debtor may use, sell, or lease property of the  
 20 estate, other than in the ordinary course of business. 11 U.S.C. §§ 363(b)(1), 363(f)(2), 363(f)(5),  
 21 1107(a).

22           22. Courts, including the Ninth Circuit, have uniformly held that approval of a  
 23 proposed sale of property under section 363(b)(1) is appropriate where the transaction is  
 24 consistent with the Debtor's reasonable business judgment. *In re Large Scale Biology*  
 25 *Corporation*, 2007 Bankr. LEXIS 4217 (Bankr. D. Cal. 2007). A debtor's sound business  
 26 judgment in the use, sale, or lease of property is given substantial judicial deference. *See, e.g., In*

1   *re Moore*, 110 B.R. 924 (Bankr. C.D. Cal. 1990); *In re Canyon P'ship*, 55 B.R. 520 (Bankr. S.D.  
2   Cal. 1985); *see also, In re Walter*, 83 B.R. 14,19-20 (B.A.P. 9th Cir. 1988).

3                 23.     The Debtor runs an employee-intensive and asset-light operation. As  
4   such, the Debtor believes that it is in the best interest of its creditors and employees to sell the  
5   business as a going concern. Importantly, maintaining business operations would save the jobs  
6   of approximately 250 individuals. Independent contractors and trade vendors of PCS (many of  
7   whom are creditors) would also benefit from continued operations of the business.

8                 24.     The Debtor has spent considerable time and energy investigating options  
9   for both reorganizing the business and selling its assets. The Debtor believes that selling its  
10   assets as a going concern through a competitive auction process with PCSPAC as the stalking  
11   horse bid will ensure that the maximum proceeds possible will be realized by the estate, which is  
12   the principal outcome sought in any Chapter 11 case. In the Debtor's informed and reasonable  
13   business judgment, this will result in a maximization of the value of the subject assets and be in  
14   the best interests of the estate and all creditors. The Debtor further asserts that a recovery for  
15   creditors through a sale of its assets would far exceed the possible recovery for creditors in a  
16   liquidation scenario.

17                 25.     Although the proposed sale does not include a carve-out provision for the  
18   benefit of unsecured creditors, it does generate sales proceeds sufficient for the Unsecured  
19   Creditor's Committee and Debtor to negotiate such a carve out with secured creditors. The  
20   Debtor does not plan to move forward with requesting approval of a sale of the Debtor's assets  
21   without having a carve-out negotiated.

22                 26.     The proposed sale outside of a plan context is warranted in this case  
23   because that the terms of the proposed sale will not restrict any creditor or any party in interest  
24   from objecting to the sale.

25                 27.     Accordingly, the proposed sale of the Assets described herein is consistent  
26   with the Debtor's business judgment and is in the best interests of the estate and the creditors.

1 Thus, the sale should be approved.

2               28. Lastly, it is imperative that the sale approval process and closing occur  
3 quickly so that the transition to the new owner is smooth and business operations are not  
4 interrupted. Any interruption in operations caused by a delay in this transaction could cause  
5 severe harm by jeopardizing closing of a sale. Thus, there is good cause to justify waiver of the  
6 14-day stay provided by Bankruptcy Rule 6004(h).

7               WHEREFORE, the Debtor respectfully requests that this Court (i) authorize the  
8 Debtor to sell the Assets outside the ordinary course of business in accordance with the terms of  
9 this Sale Motion to PCSPAC or winning bid(s) at the Auction, and (ii) authorizing the Debtor to  
10 take all actions that are reasonably necessary or appropriate to fulfill its obligations under the  
11 APA attached hereto as Exhibit A or an APA executed with winning bidder(s) and to  
12 consummate the transactions contemplated thereby. The debtor further requests that the Order  
13 on this motion become effective immediately upon its entry, notwithstanding any stay under  
14 Bankruptcy Rule 6004(h).

15               Dated: July 11, 2013.

16               FARLEIGH WADA WITT  
17

18               By:/s/ Margot D. Lutzenhiser  
19               Tara J. Schleicher, OSB #954021  
20               tschleicher@fwwlaw.com  
21               Margot D. Lutzenhiser, OSB #075982  
22               mlutzenhiser@fwwlaw.com  
23               (503) 228-6044  
24               Of Attorneys for Debtor Pacific Cargo  
25               Services, LLC  
26

## **ASSET PURCHASE AGREEMENT**

---

THIS ASSET PURCHASE AGREEMENT, dated as of 10th day of July, 2013 (the “Execution Date”), is entered into by and among a Pacific Cargo Single Purpose Acquisition Co. an **entity to be formed** (“Buyer”), and Pacific Cargo Services, Inc. ( “Seller”), Seller and Buyer are referred to in this Agreement (as defined hereinafter) collectively as the “Parties.”

WHEREAS, Seller is the owner and operator of an expedited freight and delivery service (the “Business”); and

WHEREAS, Buyer wishes to purchase from Seller, and Seller desires to sell to Buyer, substantially all of the assets of Seller relating to the Business (other than the Excluded Assets (as defined hereinafter)

WHEREAS, Seller has filed voluntary petitions for reorganization pursuant to Chapter 11 of the United States Bankruptcy Code (“Bankruptcy Code”) and are presently operating as Debtors-In-Possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

WHEREAS, on \_\_\_\_\_, 2013 the United States Bankruptcy Court for the District of Oregon (“Bankruptcy Court”) entered an order approving bidding procedures in connection with the sale of Seller’s assets and authorizing the Seller to enter into an asset purchase agreement.

WHEREAS, Buyer’s offer is subject to winning all lots bid for.

NOW, THEREFORE, in consideration of the respective representations, warranties, covenants and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

### **Purchase and Sale**

2.1        Agreements to Purchase and Sell . Subject to the terms and conditions of this Agreement, and except for the Excluded Assets, at the Closing, Seller shall sell, transfer, convey, assign and deliver to Buyer, and Buyer shall purchase and accept from Seller, free and clear from any liens, claims and encumbrances pursuant to section 363(f) of the Bankruptcy Code, with all valid liens to attach to the proceeds of sale, all right, title and interest of Seller in and to all of the assets, properties, interests and rights comprising the Business, of every kind and description, existing as of the date of this Agreement or acquired through the Closing, including all of the following assets (collectively, the “Acquired Assets ”):

(a)        all tangible assets, including but not limited to tooling, fixtures, equipment, computer systems and software, sole right and ownership to the source code, database and all other aspects of the SKY software regardless of form such as blueprints, flow charts, procedures, patterns, technical data, designs, research, manuals, records whether registered or unregistered, included on

intellectual property furniture, machinery, office equipment, furnishings and instruments;

(b) all goodwill directly arising from, related to or resulting from the Business;

(c) all Seller intellectual property assets; any and all of the following, as they exist throughout the world: (a) patents, patent applications of any kind, patent rights, inventions, discoveries and invention disclosures (whether or not patented) (collectively, "Patents"); (b) rights in registered and unregistered trademarks, service marks, trade names, trade dress, logos, packaging design, slogans and internet domain names and registrations and applications for registration of any of the foregoing (collectively, "Marks"); (c) registered and material unregistered copyrights in both published and unpublished works, and all copyright registrations and applications, and all derivatives, translations, adaptations and combinations of the above, including copyrights in (i) all design history files, (ii) manufacturing instructions, and (iii) all documents primarily related to the Seller's products (the "Products") and controlled by Seller (collectively, "Copyrights"); (d) know-how, trade secrets, confidential or proprietary information, research in progress, algorithms, data, designs, processes, formulae, drawings, schematics, blueprints, flow charts, models, strategies, prototypes, techniques, customer lists and contact numbers/addresses, business strategies, forecasts, testing procedures and testing results (collectively, "Trade Secrets"); (e) any and all other intellectual property rights and/or proprietary rights relating to any of the foregoing; (f) all licenses and other contracts under which Seller has sold, licensed, leased or otherwise transferred or granted any interest or rights to any Marks, Patents, Copyrights or Trade Secrets and (g) goodwill, franchises, permits, consents, approvals, and claims of infringement and misappropriation against third parties.

(d) all inventory including all inventory of the Products together with all inventory of raw materials, work-in-progress related to the Products and finished goods inventory of the Products, whether held at a location or facility of Seller (or of any other person on behalf of Seller) or in transit to or from Seller (or any such other person), any inventory on loan to or being used by any customers, clinicians or others for evaluation, testing or in conjunction with any studies or trials, including any inventory that is acquired by Seller between the date of the asset purchase agreement and closing date;

(e) all rights in, under and contracts or leases assumed and assigned by the Seller, if any, relating to the Business;

(f) all regulatory approvals to the extent transferable;

(g) all manufacturing instructions; and

(h) all other assets directly arising out of, relating to or resulting from the Business, of every nature whatsoever, tangible and intangible, and wherever located, such as any business records; customer lists; all insurance proceeds under any insurance policies of any kind; customer records and histories; customer

invoices; lists of suppliers and vendors and all records relating thereto; list of sales agents; price lists; engineering drawings; clinical trial data and records; records with respect to production, engineering, and product development costs; advertising matter; catalogues; photographs; instruction manuals; the name “Pacific”; “Pacific Cargo”; “Pacific Cargo Service(s)”; “PCS”; sales literature and materials; purchasing materials; media materials; manufacturing and quality control records and procedures; research and development files; design history files; data and laboratory books and media materials and plates; and copies of all files relating to the Seller intellectual property assets, including all applications, registrations, assignments, correspondence to and from the United States Patent and Trademark Office and any other foreign patent and trademark offices, dockets, workbooks, legal opinions, prior art searches, notes, memoranda and other related information.

(i) all accounts receivable and notes receivable balances that exist, whether current or non-current, including any unbilled receivables, including activity rendered prior to, but not invoiced as of the closing date, as of the closing date, including any value added taxes or similar taxes levied on such accounts receivable, any unpaid interest accrued on any such accounts receivable and any security or collateral related thereto, and any payments received with respect thereto before or after the closing date; and

(j) all books (including corporate minute books), documents, records of Seller and Seller’s affiliates as may exist on the closing date necessary to the Business as maintained by Seller;

(k) all rights of recovery, rights of set-off and rights of recoupment of every kind and nature (whether or not known or unknown or contingent or non-contingent) of the Companies with respect to the Assets and all indemnities owed to the Companies in respect of the Assets or the Business, excluding any causes of action arising under chapter 5 of the Bankruptcy Code (the “Avoidance Actions”) and all existing claims and causes of action brought by any of the Companies on or prior to the date hereof

## 2.2 Excluded Assets. Assets shall not include

- (a) cash, bank or other deposit accounts, prepaid deposits, security deposits of Seller;
- (b) rights to tax refunds, prepaid taxes or tax attributes of for related to Seller or its affiliates;
- (c) any capital stock of Seller or of any affiliate of Seller; and
- (d) mal practice or insurance claims
- (e) claims against creditors that arise by operation of the Bankruptcy Code including, but not limited to preference claim and fraudulent transfer claims.

- (e) any asset listed in Section 2.1 above that are not transferable by Seller for any reason.
- (f) other outstanding amounts unpaid and owed by Seller up until closing of any nature.

2.3 Assumed Liabilities. On the Closing Date, Buyer shall not assume any liabilities of Seller except those set forth on Schedule A hereto.

### **Purchase Price**

3.1 Purchase Price. In consideration of the sale by Seller to Buyer of the Acquired Assets, Buyer agrees to pay to Seller the following at Closing for the following lots as described in the Bid Procedures document:

As per the bid procedures outlined we are bidding Lot 8 in the amount of \$521,000 with allocations for each Lot 1 through 7 as outlined below, with Lot 2 broken out in Exhibit A.

The sum of \$1,000.00 in US Dollars in cash or certified funds for Lot 1, [All owned machinery and equipment, including office furniture and equipment, excluding Lot 2;]

The sum of \$ 250,000.00 in US Dollars in cash or certified funds for Lot 2 [Owned Vehicles]  
See Exhibit A.

The Sum of \$250,000.00 in US Dollars in cash or certified funds for Lot 3, [Accounts Receivable]. If the Closing Receivables are determined to be less than \$1,400,000 on Closing, Buyer shall pay to Sellers a dollar less for each dollar that Closing Receivables are less than \$1,400,000.

The Sum of \$10,000.00 in US Dollars in cash or certified funds for Lot 4,[ Customer List, Trade Names, Websites, Phone Numbers and other Intellectual Property]

The Sum of \$0.00 in US Dollars in cash or certified funds for Lot 5 [Truck Lease (Assumption and Assignment of Lease or Cash offer to buy leased trucks, subject to Lessor approval);]. We will assume the enterprise leases.

The Sum of \$10,000 in US Dollars in cash or certified funds for Lot 6 [Leased Scanners (Assumption and Assignment of Lease or Cash offer to buy leased equipment, subject to Lessor approval); ]

The Sum of \$0 in US Dollars in cash or certified funds for Lot 7 [Real Property Leases (Assumption and Assignment of Leases); ] We will enter into new rental leases where appropriate to do so – others we will discharge or continue month to month;

NOTE: This offer is subject to winning all lots bid for as we are only interested in these assets to allow us to continue the business as a going concern. Any interruption in service would not be acceptable.

3.2 Deposit. Buyer shall tender a deposit (the "Deposit") in the amount of \$75,000 with Sellers' broker Equity Partners CRB LLC to be held in an escrow account and to be applied to the Purchase Price at the Closing. In the event the Closing does not occur for reasons other than the fault of the Buyer, Seller shall return the Deposit to Buyer as soon as practicable thereafter.

### Closing

4.1 Closing Date. On the terms and subject to the conditions of this Agreement, the Closing shall take place at a place to be mutually agreed to by the Parties. Closing shall take place fifteen days after Bankruptcy Court approval of the sale contemplated by this Agreement.

4.4 Further Assurances.

(a) To the extent that the consent or approval of any third party is required to transfer or assign any Acquired Asset, including any Transferred Contract, to Buyer as contemplated hereunder and, such consent or approval is not obtained prior to the Closing, Seller shall execute such documents. Nothing herein shall be construed as an attempt to transfer any Acquired Asset for which the consent or approval of a third party is required unless and until such consent or approval shall be obtained.

(b) Seller, from time to time after the Closing, at the request of Buyer and without further consideration but at Buyer's sole expense, shall execute and deliver further instruments of transfer and assignment provided by Buyer at Buyer's expense as may be necessary to obtain any consents, approvals or to effectuate any transfer contemplated by this Agreement.

### Representations and Warranties of Seller

5.1 Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation, and is duly qualified to transact business as a corporation in such jurisdictions where the nature of the Business makes such qualification necessary. Seller has all requisite corporate power and authority to carry on its business (including the Business) as now being conducted.

### Representations of Buyer

6.1 Financial Status. Buyer has adequate funds to complete the transactions contemplated herein without any financing contingency.

6.2 No Conflict. Neither the execution nor performance of this Agreement will violate any contract or other commitment to which Buyer is a party, or by which it is bound, or will be in conflict with, or result in or constitute a breach or default on the part of Buyer under any such indenture, contract or other commitment.

6.3 Compliance with Laws. All consents, approvals and authorizations and all other requirements prescribed by any law, rule or regulation which must be obtained or satisfied by Buyer and which are necessary for the execution and delivery by Buyer of this Agreement and the documents to be executed and delivered by Buyer in connection herewith have been obtained and satisfied or shall be obtained and satisfied.

6.4 As-Is; Where-Is. Buyer acknowledges and agrees that all of the Acquisition Assets are being purchased by Buyer in "As-Is" and "Where-Is" condition. Buyer further acknowledges and agrees that Buyer is familiar with the Acquisition Assets and unconditionally accepts the purchase of the Acquisition Assets in such "As-Is" and "Where-Is" condition, pursuant to the terms herein.

6.5 Confidentiality. It is acknowledged by Buyer that all information discovered in the course of its due diligence is in all respects of a confidential nature and Buyer agrees at Seller's request at any time to execute a nondisclosure agreement confirming these terms of confidentiality.

### Conditions to Closing

The obligation of Seller to sell the Acquisition Assets pursuant to this Agreement shall be subject to the satisfaction of the following conditions ("Closing Conditions"):

7.1 Bankruptcy Court Approval. By written order (the "Bankruptcy Court Order") the Court shall approve this Agreement and the transactions contemplated herein pursuant to §363(b), (f) and (m) of the Bankruptcy Code as a sale to a good faith purchaser "free and clear" of all liens, claims and encumbrances.

7.2 Delivery of Purchase Price. Buyer shall deliver the Purchase Price in full to Seller at Closing.

Pacific Cargo Single Purpose Acquisition Co. [Seller Name and Address]  
120 Adelaide St West, Suite 2400  
Toronto, Ontario, M5H 1T1

By: \_\_\_\_\_ By: \_\_\_\_\_  
  
Name: Michael Franks / Gordon Cooper \_\_\_\_\_ Name: \_\_\_\_\_  
Title: Vice-Chairman Cardinal Courier \_\_\_\_\_ Title: \_\_\_\_\_

<http://www.cardinalcouriers.com/>

### Exhibit A

Vehicles List with Lienholder														
Truck Lot #	Bid	Truck #	Hub	Vin #	Plate #	Year	Make	Model	Engine	Trans.	Vehicle Size	Mileage at 4/30/13	Lienholder	
1	1841.9	43	Seattle	2FZACFDU39AAL9632	T576577	2009	Sterling	Actera	Cum 330	4F27E	26' Box-truck	225,889	Cutting Edge	
2	1806.0	51	Boise	1FDWE3FL1ADA55917	T580656	2010	Ford	E-350	5.4	5R110W	16' Box-Truck	198,000	Ford Credit	
	1806.0	52	Wenatchee	1FDWE3FL3ADA55918	T576429	2010	Ford	VA	5.4	5R110W	16' Box-Truck	176,427	Ford Credit	
	2066.8	53	Bend	1FDWE3FL1ADA55920	T576427	2010	Ford	E-350	5.4	5R110W	16' Box-Truck	71,280	Ford Credit	
	2055.1	54	Portland	1FT8W3BT9BE09931	CA07073	2011	Ford	F-350	6.7	6-Speed Auto	Pickup	52,225	Ford Credit	
	1806.0	55	Medford	1FDWE3FL9BDA16817	585FDV	2011	Ford	E-350	5.4	5R110W	16' Box-Truck	105,500	Ford Credit	
	1806.0	56	Medford	1FDWE3FLXBD014784	035FBW	2011	Ford	E-350	5.4	5R110W	16' Box-Truck	110,990	Ford Credit	
	2259.4	57	Boise	1FC2E3KL2BDA34018	067FAP	2011	Ford	E-350	5.4	5R110W	Utilimaster	31,000	Ford Credit	
	2089.0	58	Kennewick	NMOL57BN7BT04694	122FAP	2011	Ford	Transit C	2.0	4F27E	Economy Van	86,333	Ford Credit	
	2089.0	59	Bend	NMOL57AN8BT050492	180FAP	2011	Ford	Transit C	2.0	4F27E	Transit Van	91,321	Ford Credit	
	2259.4	60	Boise	1FC2E3KL7BDA34015	148FAP	2011	Ford	E-350	5.4	5R110W	Utilimaster	40,000	Ford Credit	
	2259.4	61	Boise	1FC2E3KL9BDA34016	145FAP	2011	Ford	E-350	5.4	5R110W	Utilimaster	24,000	Ford Credit	
	2259.4	62	Portland	1FC2E3KL0BDA34017	146FAP	2011	Ford	E-350	5.4	5R110W	Utilimaster	48,678	Ford Credit	
	2259.4	63	Seattle	1FC2E3KL7BDA36282	330FUP	2011	Ford	E-350	5.4	5R110W	Utilimaster	56,302	Ford Credit	
	2259.4	64	Seattle	1FC2E3KL8BDA42432	278FUP	2011	Ford	E-350	5.4	5R110W	Utilimaster	63,410	Ford Credit	
	2259.4	65	Seattle	1FC2E3KL9BDA42433	279FUP	2011	Ford	E-350	5.4	5R110W	Utilimaster	66,400	Ford Credit	
	2259.4	66	Albany	1FC2E3KL1BDA42434	329 SAP	2011	Ford	E-350	5.4	5R110W	Utilimaster	82,858	Ford Credit	
	2389.8	67	Seattle	1FC2E3KL3BDA42435	280FAP	2011	Ford	E-350	5.4	5R110W	Utilimaster	49,543	Ford Credit	
	2389.8	68	Boise	1FC2E3KL5BDA42436	331FAP	2011	Ford	E-350	5.4	5R110W	Utilimaster	44,000	Ford Credit	
	2079.5	190	Moses Lake	1FDWE3FL7BDA97087	Y116756	2011	Ford	E-350	5.4	5R110W	16' Box-Truck	141,545	Ford Credit	
	2079.5	191	Moses Lake	1FDWE3FL6BDA95167	994-FDQ	2011	Ford	E-350	5.4	5R110W	16' Box-Truck	143,153	Ford Credit	
	2209.9	194	PDX/DLS	1FDWE3FLXBD091350	376FRB	2011	Ford	E-350	5.4	5R110W	16' Box-Truck	42,429	Ford Credit	
3	5683.5	170	Seattle	2NP2HM6X2CM144310	Y116351	2011	Peterbilt	337	ISB 6.7L	Allison 2500 HS	26' Box-truck	154,747	Paccar	
	5671.7	171	Kennewick	2NP2HM6X7CM144321	582226	2011	Peterbilt	337	ISB 6.7L	Allison 2500 HS	26' Box-truck	157,001	Paccar	
	5775.5	172	PDX/RBG	2NP2HM6X6CM144312	T581948	2011	Peterbilt	337	ISB 6.7L	Allison 2500 HS	26' Box-truck	137,089	Paccar	
	5801.5	173	PDX/RBG	2NP2HM6X8CM144313	Y116352	2011	Peterbilt	337	ISB 6.7L	Allison 2500 HS	26' Box-truck	132,128	Paccar	
	5801.5	174	Seattle	2NP2HM6XCM144314	Y116353	2011	Peterbilt	337	ISB 6.7L	Allison 2500 HS	26' Box-truck	121,853	Paccar	
	6107.3	175	Seattle	2NP2HM6X1CM144315	T581949	2011	Peterbilt	337	ISB 6.7L	Allison 2500 HS	26' Box-truck	43,589	Paccar	
	5753.2	176	Portland	2NP2HM6X3CM144316	Y116354	2011	Peterbilt	337	ISB 6.7L	Allison 2500 HS	26' Box-truck	141,378	Paccar	
	5664.7	177	Seattle	2NP2HM6X5CM144317	Y116355	2011	Peterbilt	337	ISB 6.7L	Allison 2500 HS	26' Box-truck	158,356	Paccar	
	5710.5	178	Seattle	2NP2HM6X7CM144318	Y116356	2011	Peterbilt	337	ISB 6.7L	Allison 2500 HS	26' Box-truck	147,084	Paccar	
	5710.5	179	Portland	2NP2HM6X9CM144319	Y116357	2011	Peterbilt	337	ISB 6.7L	Allison 2500 HS	26' Box-truck	149,573	Paccar	
	5851.8	181	Kennewick	2NP2HM6X7CM144321	T582226	2011	Peterbilt	337	ISB 6.7L	Allison 2500 HS	26' Box-truck	122,477	Paccar	
	5918.6	182	Spokane	2NP2HM6X9CM144322	Y116358	2011	Peterbilt	337	ISB 6.7L	Allison 2500 HS	26' Box-truck	109,672	Paccar	
	5984.4	183	Seattle	2NP2HM6X0CM144323	Y116359	2011	Peterbilt	337	ISB 6.7L	Allison 2500 HS	26' Box-truck	97,041	Paccar	
	5848.3	184	Seattle	2NP2HM6X2CM144324	Y116360	2011	Peterbilt	337	ISB 6.7L	Allison 2500 HS	26' Box-truck	123,142	Paccar	
	5952.9	185	Wenatchee	2NP2HM6X4CM144325	Y116361	2011	Peterbilt	337	ISB 6.7L	Allison 2500 HS	26' Box-truck	103,094	Paccar	
	6095.3	186	Bend	2NP2HM6X6CM144326	T581950	2011	Peterbilt	337	ISB 6.7L	Allison 2500 HS	26' Box-truck	47,296	Paccar	
	5498.0	187	Yakima	2NP2HM6X8CM144327	Y116362	2011	Peterbilt	337	ISB 6.7L	Allison 2500 HS	26' Box-truck	190,307	Paccar	
	5622.3	188	Kennewick	2NP2HM6XCM144328	116363	2011	Peterbilt	337	ISB 6.7L	Allison 2500 HS	26' Box-truck	166,472	Paccar	
	5733.9	189	Kennewick	2NP2HM6X1CM144329	116364	2011	Peterbilt	337	ISB 6.7L	Allison 2500 HS	26' Box-truck	145,085	Paccar	
4	3493.5	195	Medford	1GD374BG7B1150397	T582227	2011	Chevy	SAV	6.0 L	6L-90	16' Box-Truck	169,166	Ally	
	3493.5	196	Boise	1GD374BG2B1162621	T582236	2011	GMC	SAV	6.0 L	6L-90	16' Box-Truck	138,000	Ally	
	3775.9	197	Medford	1GD374BG7B1162744	T582228	2011	GMC	G3500	6.0 L	6L-90	16' Box-Truck	57,762	Ally	
	3493.5	198	Albany	1GD374BG2B1161789	T582230	2011	GMC	G3500	6.0 L	6L-90	16' Box-Truck	173,624	Ally	
	3493.5	199	Bend	1GD374BG4B1162040	T582229	2011	GMC	SAV	6.0 L	6L-90	16' Box-Truck	83,980	Ally	
	2421.8	400	Albany	1GB3G4CG0C1170094	T585219	2012	Chevy	4500	6.0 L	6L-90	16' Box-Truck	37,704	Ally	
	2421.8	401	Seattle	1GB3G4CG8C1172109	T585220	2012	Chevy	4500	6.0 L	6L-90	16' Box-Truck	33,896	Ally	
	2421.8	402	Medford	1GB3G4CG5C1171273	T585218	2012	Chevy	4500	6.0 L	6L-90	16' Box-Truck	20,391	Ally	
5	6171.2	200	Portland	5PVNE8JV2D4S52752	T583737	2013	Hino	268	J08E	ALLISON 2200H	26' Box-truck	74,004	GE	
	6191.0	202	Portland	5PVNE8JV8D4S52755	T583738	2013	Hino	268	J08E	ALLISON 2200H	26' Box-truck	63,933	GE	
	6178.3	203	PDX/LAG	5PVNE8JV5D4S52759	T583740	2013	Hino	268	J08E	ALLISON 2200H	26' Box-truck	67,808	GE	
	6209.5	204	PDX/PNT	5PVNE8JVD4S52756	T583739	2013	Hino	268	J08E	ALLISON 2200H	26' Box-truck	58,259	GE	
	6199.3	205	PDX/PNT	5PVNE8JF9D4S52750	T583736	2013	Hino	268	J08E	ALLISON 2200H	26' Box-truck	61,358	GE	
	6223.7	206	Portland	5PVNE8JV1D4S52757	T583747	2013	Hino	268	J08E	ALLISON 2200H	26' Box-truck	53,881	GE	
	6169.9	207	Portland	5PVNE8JV4D4S52753	T583744	2013	Hino	268	J08E	ALLISON 2200H	26' Box-truck	90,025	GE	
	6238.8	208	Portland	5PVNE8JV5D4S52745	T583742	2013	Hino	268	J08E	ALLISON 2200H	26' Box-truck	49,223	GE	
	6286.4	209	Portland	5PVNE8JVOD4S52751	T583745	2013	Hino	272	J08E	ALLISON 2200H	26' Box-truck	34,657	GE	
	6171.2	210	Portland	5PVNE8JVOD4S52746	T583743	2013	Hino	268	J08E	ALLISON 2200H	26' Box-truck	75,900	GE	
	6169.9	211	Portland	5PVNE8JV9D4S52761	T583746	2013	Hino	268	J08E	ALLISON 2200H	26' Box-truck	90,244	GE	

1                   **CERTIFICATE OF SERVICE**

2                   I hereby certify that on July 11, 2013, I electronically filed the foregoing

3                   **DEBTOR'S MOTION FOR AUTHORITY TO SELL ASSETS FREE AND CLEAR OF**  
4                   **LIENS, CLAIMS AND ENCUMBRANCES OUTSIDE THE ORDINARY COURSE OF**  
5                   **BUSINESS** and PROPOSED ORDER with the Clerk of the Court using the CM/ECF system.

6                   I hereby certify that I have mailed by United States Postal Service the document to the parties  
7                   listed on the attached List of Interested Parties.

8                   Dated: July 11, 2013.

9                   FARLEIGH WADA WITT

10  
11                   By: /s/ Margot D. Lutzenhiser  
12                   Margot D. Lutzenhiser, OSB #075982  
13                   mlutzenhiser@fwwlaw.com  
14                   (503) 228-6044  
15                   Of Attorneys for Debtor

16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

## **LIST OF INTERESTED PARTIES**

## **UNSECURED CREDITORS COMMITTEE**

The Commerce Bank of Oregon  
c/o Jodi Delahunt Hubbell  
1211 SW Fifth Ave., Suite 1250  
Portland, OR 97204

Bridgetown Trucking, Inc.  
c/o Dave Chalmers  
14135 NE Airport Way  
Portland, OR 97230

Jubitz Corporation  
c/o Rich Jansen  
33 NE Middlefield Rd.  
Portland, OR 97211

Sisters Ridge, LLC  
c/o Duncan Campbell  
260 Birdshill Rd.  
Portland, OR 97219

Carson Oil Co., Inc.  
c/o Laurie Shepherd  
3125 NW 35<sup>th</sup> Ave.  
Portland, OR 97210

## **REQUESTS FOR NOTICE**

MAUREEN A HARRINGTON  
150 California St #2200  
San Francisco, CA 94111

Lake Street Properties, LLC  
Randall Danskin, P.S.  
Attn: Anthony E. Grabicki  
601 W. Riverside Ave., Ste. 1500  
Spokane, WA 99201

IBM Corporation, Attn Bkcy  
Coordinator  
275 Viger E #400  
Montreal, QC H2X 3 R7  
CANADA

## **SECURED CREDITORS**

Ally Bank  
Attn: Susan Campbell, Bky Agent  
PO Box 130424  
Roseville, MN 55113

AT&T Capital Services, Inc.  
c/o C T Corporation System, R/A  
388 State St., Ste. 420  
Salem, OR 97301

Cutting Edge FCU  
c/o Brady Howe, President/CEO  
PO Box 22192  
Portland, OR 97269-2192

De Lage Landen  
c/o The Prentice-Hall Corporation  
System, Inc., R/A  
285 Liberty St. NE  
Salem, OR 97301

Dell Financial Services  
c/o Corporation Service Company,  
R/A  
285 Liberty St. NE  
Salem, OR 97301

GE Capital  
c/o C T Corporation System, R/A  
388 State St., Ste. 420  
Salem, OR 97301

Isuzu Finance of America, Inc.  
23906 Network Place  
Chicago, IL 60673-1239

Lien Machine Inc.  
POB 1375  
Clovis, CA 93613

MSA Systems, Inc.  
1340 S De Anza Blvd, #103  
San Jose, CA 95129

Pacific Office Automation  
POB 100706  
Pasadena, CA 91189-0706

Ally Bank  
c/o C T Corporation System, R/A  
388 State St., Ste. 420  
Salem, OR 97301

1 Ford Motor Credit Co.  
2 c/o Thomas K. Hooper  
3 1001 SW 5th Ave #2150  
Portland, OR 97204-2150

GE Capital Corporation  
c/o Wilson C. Muhlheim  
777 High Street #300  
Eugene, OR 97401

Graystone Capital  
c/o Kevin O'Hare, President  
851 E. Hamilton Blvd., #200  
Campbell, CA 95008

4 MSA Systems, Inc.  
5 c/o Shadi Gholami, R/A  
6 1340 S De Anza Blvd., Suite 103  
San Jose, CA 95129

PACCAR Financial Corp.  
c/o The Prentice-Hall Corporation  
System, Inc., R/A  
285 Liberty St. NE  
Salem, OR 97301

PACCAR Financial Corp.  
c/o P. Scott McCleery  
POB 11230  
Eugene, OR 97440

7 Pacific Office Automation  
8 c/o Terry Newsom, R/A  
9 14747 NW Greenbrier Parkway  
Beaverton, OR 97006

10 **OTHER PARTIES**

12 US Trustee, Portland  
13 620 SW Main St #213  
Portland, OR 97205

AMB U.S. Logistics Fund, L.P.  
c/o AMB Property Corporation  
Pier 1, Bay 1  
San Francisco, CA 94111

AT&T Capital Services, Inc.  
2000 W. AT&T Center Dr.  
Hoffman Estates, IL 60192-5000

15 All Saints Transportation  
16 6790 Union Ave  
Bay City, OR 97107

Boyd Enterprises Utah  
1946 E. Edinger  
Santa Ana, CA 92705

Chubb Group/Federal Insurance  
15 Mountain View Rd.  
Warren, NJ 07059

18 AXA Equitable Life Ins Co.  
19 POB 1047  
Charlotte, NC 28277

Dell Financial Services  
One Dell Way  
Round Rock, TX 78682

EAN Services, LLC  
Attn: Business Rental Sales  
600 Cororate Park Drive  
Saint Louis, MO 63105

21 Clyde M. Loughead  
913 SE Zeller Lane  
Bend, OR 97702

Graystone Capital  
900 East Hamilton Blvd, Ste. 1  
Campbell, CA 95008

Ja-Lu Storage  
Nelson Real Estate  
845 Campbell St.  
Baker City, OR 97814

24 Fireman's Fund/National Surety  
25 777 San Marin Drive  
Novato, CA 94998

Kyle McCracken & Guy Oakes  
c/o Terrell Marshall Daudt  
936 N. 34th St, #400  
Seattle, WA 98103-8869

Lake Street Investments, LLC  
c/o Carstens Management Co.  
1202 E. Sprague Ave. Ste. 202  
Spokane, WA 99202

1	KENT 84, L.L.C. Attn: Property Manager 3417 Hunts Point Rd. Bellevue, WA 98004	New Age Enterprises POB 7165 Kennewick, WA 99336	Norcan POB 68233 Portland, OR 97268
4	Maiers Industrial Park, Inc. PO Box 850 Moses Lake, WA 98837	OfficeMax Inc. 263 Shuman Blvd. Naperville, IL 60563	Ohme Storage 501 Ohme Garden Rd. Wenatchee, WA 98801
7	Northwest Warehouse Leasing Co 2300 River Rd., Suite #8 Yakima, WA 98902	PACCAR Financial 777 106th Ave NE Bellevue, WA 98004	Pacific Office Automation 14747 NW Greenbrier Parkway Branch 80 Beaverton, OR 97006
10	Old Salem Properties, LLC 19950 S. Leland Rd. Oregon City, OR 97045	Schmilne Inc. dba Silkcraft of Oregon 3324 NW Marine Dr. Troutdale, OR 97060	Steve's Assured Security Stor. 80886 N. Hwy 395 Hermiston, OR 97838
13	Philadelphia Insurance Co. One Bala Plaza, Suite 100 Bala Cynwyd, PA 19004	Store Moore 2400 W. 7th St. The Dalles, OR 97058	Supreme Storage 7901 Old Hwy 99 N Roseburg, OR 97470
16	Storage Plus 2065 Hilene Rd. Pocatello, ID 83201	The Fresh Pot 724 SW Washington Portland, OR 97205	Tillamook Mini Storage 3510 3rd St. Tillamook, OR 97141
19	TLC Companies Payroll Plus Corporation 6160 Summit Drive N Minneapolis, MN 55430	Travelers Insurance Attn: Consumer Affairs One Tower Square, 8MS Hartford, CT 06183	Van Auker, Ron W. 3084 N. Lanark St. Meridian, ID 83642
22	West Coast Paper POB 4566 Medford, OR 97501	Willis Boyd 1946 E. Edigner Santa Ana, CA 92705	Winchester Ranch, Inc. Po Box 667 Myrtle Point, OR 97458
25			
26			

1 IRS  
2 Centralized Insolvency Oper.  
PO Box 7346  
3 Philadelphia, PA 19101-7346

ODR  
Attn: Bankruptcy Unit  
955 Center St NE  
Salem, OR 97301-2555

Washington Dept of Revenue  
Attn: Doug Houghton  
2101 4<sup>th</sup> Ave., Suite 1400  
Seattle, WA 98121-2300

4 Les Schwab Tire Centers, Inc.  
c/o Corey J. Parks, R/A  
5 20900 Cooley Rd.  
Bend, OR 97701

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In re  
Pacific Cargo Services, LLC,  
Debtor.

Case No. 13-30439-tmb11

[Proposed] ORDER (I) AUTHORIZING AND APPROVING ASSET PURCHASE AGREEMENT BY AND BETWEEN PACIFIC CARGO SINGLE PURPOSE ACQUISITION CO. OR ITS DESIGNEE AND DEBTOR; (II) AUTHORIZING AND APPROVING SALE OF CERTAIN ASSETS OF DEBTOR FREE AND CLEAR OF LIENS; AND (III) GRANTING CERTAIN RELATED RELIEF

This matter came before the Court for hearing on July 23, 2013 upon the Debtor's Motion for Authority to Sell Property Free and Clear of Liens, Claims and Encumbrances Outside the Ordinary Course of Business and Notice of Intent to Sell (Docket Nos. \_\_\_\_ and 357) (the "Sale Motion") in the above-captioned case for an order (the "Sale Approval Order") approving the proposed sale of certain assets set forth in the Asset Purchase Agreement dated July 10, 2013 (the "Assets") between the Debtor and Pacific Cargo Single Purpose Acquisition Co. ("PCSPAC" or "Purchaser") [or \_\_\_\_\_, the successful over-bidder at the court-

approved auction ("Auction") on July 23, 2013], free and clear of liens. Having considered the submissions, arguments of counsel and evidence presented and the files and records herein; and now being fully advised of the premises; and after due deliberation and sufficient cause appearing therefor, the Court finds that:

A. On January 28, 2013, a voluntary petition for relief under Chapter 11 of Title 11, the United States Code (the "Bankruptcy Code") was filed by the Debtor.

B. This Court has jurisdiction of this matter pursuant to 28 USC §§ 157 and 1334, 11 U.S.C. §§ 361, 363, 365, 1107 and related statutes and rules. Venue is proper pursuant to 28 USC § 1408. This matter is a core proceeding pursuant to 28 USC § 157(b)(2)(A) and (N).

C. The statutory predicates for the relief sought in the Sale Motion are sections 105(a) and 363 of the Bankruptcy Code and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

D. Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate.

E. Good and sufficient notice of the Sale Motion and the relief sought therein has been given and no other and further notice is required. A reasonable opportunity to object and be heard regarding the relief requested in the Sale Motion has been afforded to parties in interest.

F. On or about July 10, 2013, the Debtor and PCSPAC entered into an Asset Purchase Agreement (the "APA") pursuant to which PCSPAC agreed to purchase the Assets, subject to certain conditions as set forth in the APA. [Or, the Debtor conducted an Auction on July 23, 2013 and received overbid(s) by \_\_\_\_\_, \_\_\_\_\_ ("Winning Bidders"). The Debtor entered into Asset Purchase Agreement(s) ("APAs") with the Winning Bidder(s).]

G. As evidenced by the certificates of service filed with this Court (the "Certificates of Service"), and based on representations of Debtor's counsel at the Sale Hearing,

due, proper, timely, adequate and sufficient notice of the Sale Motion, the Sale Hearing and the proposed sale and the transactions contemplated thereby, has been provided in compliance with sections 102(1), 363(b) and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 9007, 9008 and 9014 and any other applicable requirements. Such notice was good, sufficient and appropriate under the circumstances and no other or further notice of the Sale Motion and the transactions contemplated thereby is or shall be required.

H. The Debtor entertained competitive bidding at the court-authorized Auction on July 23, 2013, and in its best business judgment considered all competing bids.

I. The Debtor may sell the Assets free and clear of all liens, claims, encumbrances and interests because each entity with a security interest in the Assets to be transferred on the Closing Date either (a) has consented to the Sale; (b) could be compelled in a legal or equitable proceeding to accept a money satisfaction of such interest; or (c) otherwise falls within the provisions of 363(f) of the Bankruptcy Code, and therefore, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of liens, claims encumbrances and interests who have been properly noticed and who did not object to the Sale Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code.

J. Good and sufficient reasons for approval of the APA and the proposed sale have been articulated. The relief requested in the Sale Motion is in the best interests of the estate, its creditors and other parties in interest.

K. The Debtor has demonstrated both (a) good, sufficient, and sound business purpose and justification and (b) compelling circumstances for the sale other than in the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code, in that, among other things, the immediate consummation of the sale to PCSPAC [or the Winning Bidder] is necessary and appropriate to maximize the value of the estate; the estate lacks sufficient cash to

operate or move its Assets to another location; possession of the premises at which the Debtor operates will be turned over to the landlord of the premises pursuant to a prior order of this Court (Docket No. 39) on or before April 29, 2010; the sale will provide the means for the Debtor to maximize distributions to creditors; and absent consummation of the sale, the Debtor or a chapter 7 trustee may be forced to conduct a piecemeal liquidation of the Assets, which is likely to yield substantially less proceeds available to distribute to creditors than the sale.

L. The APA was negotiated, proposed and entered into by the parties in good faith, from arm's length bargaining positions and without collusion. PCSPAC [or the Winning Bidder] is not an "insider" or "affiliate" of the Debtor (as each such term is defined in the Bankruptcy Code). PCSPAC is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby with respect to the transactions contemplated by the APA. In the absence of a stay pending appeal, if the closing of the sale occurs at any time after entry of this Order, then, with respect to the APA, Purchaser, as a purchaser in good faith of the Assets, shall be entitled to the protections of section 363(m) of the Bankruptcy Code if this Order or any authorization contained herein is reversed or modified on appeal.

M. The Debtor has the power and authority to execute the APA, and all other documents contemplated thereby, and to consummate the transactions contemplated by the APA. The APA and all of the transactions contemplated thereby have been duly and validly authorized by all necessary actions of the Debtor. No consents or approvals other than authorization and approval of this Court are required for the Debtor to consummate the sale.

N. The APA constitutes the highest and best offer for the Assets, and will provide a greater recovery for the Debtor's estate than would be provided by any other available alternative. The Debtor's determination that the APA constitutes the high offer for the Assets constitutes a valid and sound exercise of the Debtor's business judgment.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. The Sale Motion is GRANTED.
2. Any objections to entry of the Sale Approval Order or the relief granted herein and requested in the Sale Motion that have not been withdrawn, waived, resolved or settled, and all reservation of rights included therein are hereby denied and overruled on the merits with prejudice.
3. The terms and conditions of the APA are hereby approved in all respects. Pursuant to the provisions of sections 105 and 363 of the Bankruptcy Code, Debtor is hereby authorized and directed to sell the Assets described in the APA to PCSPAC [or the Winning Bidder].
4. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, the Assets shall be transferred to PCSPAC [or the Winning Bidder] in accordance with the APA, and such transfer shall constitute a legal, valid, binding and effective transfer of such Assets and shall vest Purchaser with title to the Assets free and clear of any interest in such Assets of any entity other than the Debtor's estate under subsection 363(f) of the Bankruptcy Code.
5. As of the Closing, PCSPAC [or the Winning Bidder] shall have any and all rights, claims, defenses and offsets held by the Debtor and the estate as to the Assets.
6. The transfer of the Assets pursuant to this Sale Approval Order shall not subject PCSPAC [or the Winning Bidder] to any liability with respect to the obligations incurred in connection with, or in any way related to, the Debtor or the Assets prior to the Closing Date, as against all parties who received actual notice of the sale or who received adequate notice in accordance with applicable law regarding due process.

7. The Debtor is authorized and directed to execute and deliver, and empowered and directed to fully perform under, consummate and implement the APA, together with all additional instruments and documents that may be reasonably necessary to implement the APA.
8. Except as expressly permitted or otherwise specifically provided for in the APA or this Sale Approval Order, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Assets shall be transferred to PCSPAC [or the Winning Bidder], and, as of the Closing Date, shall be free and clear of all liens, claims, encumbrances and interests as against all parties who received actual notice of the Sale Motion or who received adequate notice in accordance with applicable law regarding due process. The transfer of the Assets to PCSPAC [or the Winning Bidder] pursuant to the APA will be a legal, valid and effective transfer of the Assets, and vests or will vest PCSPAC [or the Winning Bidder] with all right, title and interest of Debtor to the Assets free and clear of liens, claims, encumbrances and interests. All such liens, claims, encumbrances and interests shall attach to the proceeds from the sale in the approximate amount of \$54,829 to the same extent, priority and validity as they attached to the Assets, subject to any rights, claims and defenses Debtor may possess with respect thereto.
9. The transactions contemplated by the APA are undertaken by PCSPAC [or the Winning Bidder] in good faith, as that term is defined in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the sale shall not affect the validity of the sale to PCSPAC [or the Winning Bidder]. PCSPAC [or the Winning Bidder] is a good faith purchaser of the Assets and is entitled to all

of the benefits and protections afforded by section 363(m) of the Bankruptcy Code.

10. This Court retains jurisdiction to enforce and implement the terms and provisions of the APA, all amendments thereto, any waivers and consents thereunder and each of the agreements executed in connection therewith. To the extent that this Sale Approval Order is inconsistent with any prior order or pleading with respect to the Sale Motion, the terms of the Sale Approval Order shall govern. The provisions of the APA and this Sale Approval Order shall remain effective and enforceable notwithstanding the subsequent entry of any order confirming any chapter 11 plan or other order in this case (including any order entered after any conversion of this case under chapter 7 of the Bankruptcy Code).
11. On or before the Closing Date, each of the Debtor's creditors is authorized and directed to execute such documents and take all other actions as may be necessary, or reasonably requested by the Debtor, to release its liens, claims, encumbrances and interests in the Assets, if any, as such lien, claim encumbrance and/or interest may have been recorded or otherwise exist.
12. The terms and provisions of the APA and this Sale Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtor, its estate, its successors and assigns, PCSPAC [or the Winning Bidder] and any affected third parties, notwithstanding any subsequent appointment of any trustee(s) under any chapter of the Bankruptcy Code.
13. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the transfer of the Assets to PCSPAC [or the Winning Bidder].

14. This Sale Approval Order shall be effective and enforceable immediately upon entry and, notwithstanding the provisions of Bankruptcy Rule 6004, this Sale Approval Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon issuance hereof. Time is of the essence in closing the transactions referenced herein, and the Debtor and PCSPAC [or the Winning Bidder] intend to close the sale as soon as practicable.

# # #

**PRESENTED BY:**

FARLEIGH WADA WITT

By: /s/ Margot D. Lutzenhiser  
Tara J. Schleicher, OSB #954021  
tschleicher@fwqlaw.com  
Margot D. Lutzenhiser, OSB #075982  
mlutzenhiser@fwqlaw.com  
(503) 228-6044  
Of Attorneys for Pacific Cargo Services, LLC

cc: Interested Parties